House of Representatives

General Assembly

File No. 279

February Session, 2010

Substitute House Bill No. 5409

House of Representatives, April 1, 2010

The Committee on Banks reported through REP. BARRY of the 12th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING DEBT SETTLEMENT SERVICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (a) of section 36a-671 of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) As used in this section and sections 36a-671a to 36a-671d, inclusive, (1) "debt negotiation" means, for or with the expectation of a fee, commission or other valuable consideration, assisting a debtor in negotiating or attempting to negotiate on behalf of a debtor the terms of a debtor's obligations with one or more mortgagees or <u>secured</u> creditors of the debtor, including the negotiation of short sales of residential property or foreclosure rescue services; (2) "debtor" means any individual who has incurred indebtedness or owes a debt for personal, family or household purposes; (3) "mortgagee" means the original lender under a mortgage loan secured by residential property or its agents, successors or assigns; (4) "mortgagor" means a debtor who is an owner of residential property, including, but not limited to,

a single-family unit in a common interest community, who is also the borrower under a mortgage encumbering such residential property; (5) "short sale" means the sale of residential property by a mortgagor for an amount less than the outstanding balance owed on the loan secured by such property where, prior to the sale, the mortgagee or an assignee of the mortgagee agrees to accept less than the outstanding loan balance in full or partial satisfaction of the mortgage debt and the proceeds of the sale are paid to the mortgagee or an assignee of the mortgagee; (6) "foreclosure rescue services" means services related to or promising assistance in connection with (A) avoiding or delaying actual or anticipated foreclosure proceedings concerning residential property, or (B) curing or otherwise addressing a default or failure to timely pay with respect to a mortgage loan secured by residential property, and includes, but is not limited to, the offer, arrangement or placement of a mortgage loan secured by residential property or other extension of credit when those services are advertised, offered or promoted in the context of foreclosure related services; and (7) "residential property" means one-to-four family owner-occupied real property.

Sec. 2. (NEW) (*Effective October 1, 2010*) (a) For purposes of sections 2 to 11, inclusive, of this act: (1) "Debt settlement provider" means any individual or entity that offers or agrees to provide debt settlement services to any individual for or with the expectation of a fee, commission or other valuable consideration; and (2) "debt settlement services" means negotiating or attempting to negotiate down unsecured consumer debt resulting in payment of less than the amount owed being accepted as full payment or full satisfaction of such debt.

(b) No person shall engage in debt settlement services as a debt settlement provider in this state without a debt settlement services license. Any person desiring to obtain such a license shall file with the Banking Commissioner an application signed under oath and setting forth such information as the commissioner may require. Each applicant for such license and each licensee shall notify the

commissioner of any change in the applicant's business from that stated in the application for the license.

(c) An application for a debt settlement services license or renewal of such license shall be in writing on a form provided by the commissioner and include the following: (1) The history of criminal convictions of the applicant for the ten-year period prior to the date of the application; (2) the applicant's partners, if the applicant is a partnership; (3) the applicant's members, if the applicant is a limited liability company or an association; (4) the applicant's officers, directors and owners, if the applicant is a corporation; and (5) sufficient information pertaining to the history of any criminal convictions of such partners, directors, members, officers, directors and owners for the ten-year period prior to the date of the application, as the commissioner deems necessary to make findings pursuant to subsection (d) of this section.

(d) If the commissioner finds, upon the filing of an application for a debt settlement services license, that (1) the financial responsibility, character, reputation, integrity and general fitness of the applicant and of the applicant's partners, if the applicant is a partnership, members, if the applicant is a limited liability company or association, and officers, directors and owners, if the applicant is a corporation, are such as to warrant a belief by the commissioner that the debt settlement services business will be operated soundly and efficiently, in the public interest and consistent with the purposes of sections 2 to 11, inclusive, of this act; and (2) the applicant is solvent and no proceeding in bankruptcy, receivership or assignment for the benefit of creditors is pending against the applicant, the commissioner may issue the applicant a debt settlement services license. If the commissioner fails to make such findings, or finds that the applicant or any partner, member, officer, director or owner of the applicant has been convicted within the past ten years of any misdemeanor involving any aspect of the debt settlement business or of any felony, the commissioner shall not issue a license and shall notify the applicant of the reasons for denying the application for a license. Any denial of an application for a license by

the commissioner shall, when applicable, be subject to the provisions of section 46a-80 of the general statutes.

(e) An applicant may withdraw an application for a license. Such withdrawal shall be effective upon receipt by the commissioner of a notice of intent to withdraw such application. The commissioner may issue a denial of an application for a license that has been withdrawn not later than one year after the effective date of the withdrawal.

(f) Each applicant for a debt settlement services license shall, at the time of filing such application with the commissioner, pay to the commissioner an application fee of one thousand six hundred dollars. Each such license shall expire at the close of business September thirtieth of the odd-numbered year following its issuance unless such license is renewed. Each licensee shall, not later than September first of the year in which the license expires, file such application for renewal as the commissioner may require.

(g) If the commissioner determines that a check tendered by an applicant to pay an application fee has been dishonored, the commissioner shall automatically suspend the license or a renewal license that has been issued but is not yet effective. The commissioner shall give the licensee notice of the automatic suspension pending a proceeding for revocation or refusal to renew such license and an opportunity for a hearing on such actions in accordance with section 36a-51 of the general statutes.

(h) No abatement of the license fee shall be made if the license is surrendered, revoked or suspended prior to the expiration of the period for which it was issued. The fee required by subsection (f) of this section shall be nonrefundable.

Sec. 3. (NEW) (*Effective October 1, 2010*) (a) The commissioner may suspend, revoke or refuse to renew any debt settlement services license or take any other action, in accordance with the provisions of section 36a-51 of the general statutes, for any reason the commissioner deems a sufficient ground on which to deny an application for a license

pursuant to sections 2 to 11, inclusive, of this act, or, if the commissioner finds that the licensee or any proprietor, director, officer, member, partner, shareholder, trustee, employee or agent of such licensee has done any of the following: (1) Made any material misstatement in the application; (2) committed any fraud or misappropriated funds; (3) violated any of the provisions of sections 2 to 11, inclusive, of this act or any other law or regulation applicable to the conduct of its business; or (4) materially failed to perform any obligations owed pursuant to an agreement with a debtor in this state.

(b) The commissioner may take action, in accordance with sections 36a-50 and 36a-52 of the general statutes, against (1) any person who has violated, is violating or is about to violate the provisions of sections 2 to 11, inclusive, of this act; or (2) any licensee or any proprietor, director, officer, member, partner, shareholder, trustee, employee or agent of such licensee who has committed any fraud, misappropriated funds or materially failed to perform any obligations owed pursuant to an agreement with a debtor in this state.

Sec. 4. (NEW) (*Effective October 1, 2010*) (a) Each debt settlement services license shall state the address at which the licensee's debt settlement services business is to be conducted and the full name of the licensee. If a licensee does not have a physical location in this state, the licensee shall maintain a registered agent in this state and such agent's address shall be stated on the debt settlement services license. Each debt settlement services license shall be maintained at the address stated on such license and available for public inspection.

(b) No licensee shall use any name other than the name stated on such licensee's debt settlement services license. Any licensee seeking to change the address of such licensee's debt settlement services business shall provide written notice to the commissioner prior to such change.

(c) No license shall be transferable or assignable except that, in connection with the acquisition of a licensee by merger or otherwise, the license shall be transferred to the acquirer upon such terms and following such application as the commissioner prescribes.

(d) Not later than fifteen days after a licensee ceases to engage in the business of debt settlement services in this state for any reason, including a business decision to terminate operations in this state, license revocation, bankruptcy or voluntary dissolution, such licensee shall surrender its debt settlement services license to the commissioner in person or by registered mail.

Sec. 5. (NEW) (*Effective October 1, 2010*) Each debt settlement services licensee who receives or holds consumer funds for payment to creditors shall maintain, for the benefit of debtors, a separate bank account in which all payments received from debtors who are residents of this state shall be deposited. Every licensee shall keep and use in such licensee's business such books, accounts and records that will enable the commissioner to determine whether such licensee is complying with the provisions of sections 2 to 11, inclusive, of this act and with the regulations adopted pursuant to said sections. Every licensee shall preserve such books, accounts and records for at least seven years after making the final entry on any transaction recorded therein.

Sec. 6. (NEW) (*Effective October 1, 2010*) The commissioner may adopt such regulations, in accordance with chapter 54 of the general statutes, as the commissioner deems necessary to administer and enforce the provisions of sections 2 and 3 of this act.

Sec. 7. (NEW) (*Effective October 1, 2010*) The provisions of sections 2 to 11, inclusive, of this act shall not apply to the following: (1) Any attorney admitted to the practice of law in this state, when engaged in such practice; (2) any bank or agent of any bank, fiduciary, or financing or lending institution that is authorized to transact business in this state or any other state and performs debt settlement services as an incidental part of its principal business; (3) any title insurance or abstract company authorized to transact business in this state or any other state, while doing an escrow business; and (4) any person acting pursuant to any law of this state or the United States or to the order of a court.

Sec. 8. (NEW) (*Effective October 1, 2010*) (a) No debt settlement services license or a renewal of such a license shall be granted unless the applicant meets one of the following surety bond, bond substitute or insurance requirements:

(1) Each applicant shall file with the commissioner a surety bond written by a surety authorized to write such bonds in this state. For every applicant, the principal amount of the bond shall be in an amount determined by the commissioner but, subject to the provisions of this subdivision, shall not exceed forty thousand dollars, except if the applicant receives or holds consumer funds for payment to creditors, the bond shall be the higher of forty thousand dollars or twice the amount of the highest total amount of payments received by the applicant from debtors in this state in connection with the applicant's debt adjustment activity in any month during the preceding twelve-month period ending July thirty-first of each year. Each licensee shall submit to the commissioner evidence that the bond complies with the provisions of this subdivision by September first of each year;

(2) As a substitute for a surety bond, a licensee may file with the commissioner, in the same amount required for a surety bond in subdivision (1) of this subsection, one of the following: (A) An irrevocable letter of credit, issued or confirmed by a bank approved by the commissioner, payable upon presentation of a certificate by the commissioner stating that the provider or its agent has not obtained a surety bond, or (B) bonds or other obligations of the United States or guaranteed by the United States or bonds or other obligations of this state or a political subdivision of this state, to be deposited and maintained with a bank approved by the administrator for this purpose; and

(3) In lieu of the surety bond or bond substitute, the applicant may provide evidence of insurance in the amount of two hundred fifty thousand dollars that (A) insures against the risk of dishonesty, fraud, theft and other misconduct on the part of the applicant or licensee or a

director, employee or agent of the applicant or licensee, (B) is issued by an insurance company authorized to do business in this state and rated at least an A by a nationally recognized rating organization, (C) has a minimum deductible of ten per cent of the total insurance coverage, (D) is payable to the applicant, to any individuals who have an agreement with the applicant and to this state, and (E) is not subject to cancellation by the applicant without the approval of the commissioner or without a replacement policy that meets the requirements set forth in this subsection.

(b) The form of any surety bond filed pursuant to this section shall be approved by the Attorney General. Any surety bond filed pursuant to this section shall be conditioned upon the licensee faithfully performing its obligations under any and all written agreements with debtors and conducting its debt settlement business consistent with the provisions of sections 2 to 11, inclusive, of this act. Any debtor who may be damaged by the failure of the licensee to perform its obligations under any written agreements may proceed on any such surety bond or bond substitute against the principal or surety on such surety bond or bond substitute or file a claim on the insurance policy to recover damages. The commissioner may proceed on any such surety bond or bond substitute against the principal or surety on such surety bond or bond substitute, or both, to collect any civil penalty imposed upon the licensee pursuant to subsection (a) of section 36a-50 of the general statutes. The proceeds of any such surety bond, bond substitute or insurance policy, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of such claimants against the licensee in the event of bankruptcy of the licensee and shall be immune from attachment by creditors and judgment creditors.

(c) Any surety bond, bond substitute or insurance policy required by this section shall be maintained for as long as the licensee holds a debt settlement services license. The aggregate liability under any such surety bond, bond substitute or insurance policy shall not exceed the principal amount of the surety bond or bond substitute or the limit of

liability of the insurance policy.

(d) The surety or insurance company shall have the right to cancel any bond, bond substitute or insurance policy written or issued under this section at any time by a written notice to the licensee stating the date cancellation shall take effect. Such notice shall be sent by certified mail to the licensee not later than thirty days prior to the date of cancellation. No such bond, bond substitute or insurance policy shall be cancelled unless the surety or insurance company notifies the commissioner in writing not later than thirty days prior to the date of cancellation. After receipt of such notification from the surety or insurance company, the commissioner shall give written notice to the licensee of the date the cancellation of such bond, bond substitute or insurance policy shall take effect. The commissioner shall automatically suspend the license on such date unless, prior to such date, the licensee submits a letter of reinstatement of the bond, bond substitute or insurance policy from the surety or insurance company or a new bond, bond substitute or insurance policy or the licensee has surrendered the license. After a license has been automatically suspended, the commissioner shall give the licensee notice of the automatic suspension, pending proceedings for revocation or refusal to renew and an opportunity for a hearing on such actions in accordance with section 36a-51 of the general statutes and require the licensee to take or refrain from taking such action that, in the opinion of the commissioner, will effectuate the purposes of this section.

(e) No licensee shall use, attempt to use or make reference to, either directly or indirectly, any word or phrase that states or implies that the licensee is endorsed, sponsored, recommended, bonded or insured by this state.

Sec. 9. (NEW) (*Effective October 1, 2010*) (a) Before providing debt settlement services in this state, a debt settlement services provider shall fully explain its services and fully disclose all fees to be charged for such services and the schedule for collecting such fees.

(b) A debt settlement provider shall not furnish debt settlement

services to any debtor in this state unless the provider has prepared a financial analysis of such debtor.

(c) Before a debtor assents to an agreement to engage in a debt settlement program with a debt settlement provider, such debt settlement provider shall (1) provide the debtor with a copy of the analysis required by subsection (b) of this section in a record that identifies the debt settlement provider and that the debtor may keep whether or not the debtor assents to the agreement; and (2) inform the debtor of the availability, at the debtor's option, of assistance by a toll-free communication system or in person to discuss the financial analysis and fee schedule required pursuant to subsections (a) and (b) of this section.

(d) Before a debtor assents to an agreement with a debt settlement services provider, such provider shall inform the debtor of the provider's name and address and that:

(1) Debt settlement programs are not suitable for all debtors and that the debtor may ask the provider about other ways to deal with indebtedness;

(2) Participation in the debt settlement program may adversely affect the debtor's credit rating or credit score;

(3) Nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;

(4) Unless the debtor is insolvent, if a creditor settles for less than the full amount of the debt, the debt settlement program may result in the creation of taxable income to the debtor, even though the debtor does not receive any money;

(5) Specific results cannot be predicted or guaranteed and the provider cannot force negotiations or settlements with creditors, but will advocate solely on behalf of the creditor;

(6) The debtor is required to set aside money in a savings account

according to the debt settlement provider's plan before settlements can be negotiated;

(7) The debt settlement services provider does not provide accounting, bankruptcy or legal advice to the debtor unless the provider is professionally licensed to provide such advice;

(8) The debt settlement provider is the debtor's advocate and does not receive compensation from creditors, banks or third-party collection agencies; and

(9) The debt settlement provider does not make monthly payments to the debtor's creditors.

(e) Every agreement between a debt settlement provider and a debtor shall be in writing.

(f) A debt settlement provider shall not:

(1) Settle a debt on behalf of an individual for more than fifty per cent of the amount of the debt owed a creditor unless the individual assents to the settlement after the creditor has assented;

(2) Act under a power of attorney authorizing it to settle a debt, unless the power of attorney expressly limits the provider's authority to settle debts for not more than fifty per cent of the amount of the debt owed a creditor;

(3) Exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(4) If the provider does not receive and hold consumer funds for payment to creditors, initiate a transfer from an individual's account at a bank with another person unless the transfer is: (A) A return of money to the individual, (B) for payment of a fee, provided such payment occurs before termination of an agreement and is properly authorized by the agreement and sections 2 to 11, inclusive, of this act, (C) for payment of a creditor for purposes of funding a negotiated

settlement authorized pursuant to subdivisions (1) and (2) of this subsection, or (D) for payment of a creditor for purposes of funding a negotiated settlement, provided both the transfer of money and settlement have been authorized by the debtor;

(5) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification or confirmation by the creditor that the payment is in full settlement of the debt or is part of a payment plan that is in full settlement of the debt;

(6) Make a representation that (A) the provider will furnish money to pay bills or prevent attachments, (B) payment of a certain amount will guarantee satisfaction of a certain amount or range of indebtedness, or (C) participation in a program will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction or loss of employment;

(7) Employ an unfair, unconscionable or deceptive act or practice, including the knowing omission of any material information;

(8) Advertise, display, distribute, broadcast or televise or permit to be advertised, displayed, distributed, broadcast or televised the licensee's services, rates or terms in any manner by which any false, misleading or deceptive statement or representation is made with regard to the services to be performed by the licensee or the charges to be made for such services;

(9) Lend money or provide credit to the individual, other than through a separate affiliate holding an appropriate lending license, except as a deferral of a settlement fee at no additional expense to the individual;

(10) Purchase from a creditor any obligation of a debtor;

(11) Operate as a collection agent and as a licensee with regard to the same debtor's account;

(12) Permit any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in;

(13) Obtain a mortgage or other security interest from any person in connection with the services provided to the debtor;

(14) Provide the debtor less than the full benefit of a compromise of a debt arranged by the provider, except for fees charged for services as specified in the written agreement;

(15) Advise individuals to stop payment on any of the accounts being handled by the provider;

(16) Except as permitted by federal law, disclose the identity or identifying information of the debtor or the identity of the debtor's creditors, except (A) to the commissioner, upon proper demand, (B) to a creditor of such debtor to the extent necessary to secure the cooperation of the creditor in a program, (C) to the extent necessary to administer the program, or (D) as authorized by such debtor; or

(17) Falsely represent that it is a not-for-profit entity or not-for-profit credit counselor that will provide stand-alone credit counseling services.

Sec. 10. (NEW) (*Effective October 1, 2010*) (a) A debt services provider shall not directly or indirectly impose a fee or other charge on an individual or receive money from or on behalf of an individual for debt settlement services, except as permitted by this section.

(b) Fees for debt settlement services shall not exceed the following:

(1) The lesser of four hundred dollars or four per cent of the debt listed in the debt settlement services plan at the inception of such plan for the following services, which include, but are not limited to: (A) Consultation, (B) obtaining a credit report, and (C) setting up an account; and

(2) Ten dollars for a monthly service fee for each creditor remaining

at the time such fee is assessed.

(c) With respect to an agreement that provides for a flat fee based on the overall amount of included debt, the total aggregate amount of fees charged to any individual pursuant to chapter 669 of the general statutes, including fees charged pursuant to subdivisions (1) and (2) of subsection (b) of this section, shall not exceed seventeen per cent of the principal amount of debt included in the agreement at the inception of the agreement. The flat fee authorized under this section shall be assessed in equal monthly payments over the course of at least half the length of the debt services plan, as estimated at such plan's inception, unless the payment of fees is voluntarily accelerated by the individual in a separate record and at least half of the overall amount of outstanding debt covered by the agreement has been settled.

(d) With respect to agreements in which fees are calculated as a percentage of the amount saved by an individual, a settlement fee shall not exceed thirty per cent of the excess of the outstanding amount of each debt over the amount actually paid to the creditor, as calculated at the time of settlement. Settlement fees authorized pursuant to this subsection shall become billable only as debts are settled and the total aggregate amount of fees charged to any individual under part II of chapter 669 of the general statutes, including fees charged under this subsection, may not exceed twenty per cent of the principal amount of debt included in the agreement at such agreement's inception.

(e) A debt services provider may not impose or receive fees under both subsections (c) and (d) of this section.

Sec. 11. (NEW) (*Effective October 1, 2010*) (a) Any person who engages in debt settlement services without a license as required pursuant to sections 2 to 10, inclusive, of this act shall be fined not more than one thousand dollars or imprisoned not more than one year, or both, for each violation. Each day on which a person engages in debt settlement services without a license as required by said sections shall constitute a separate violation.

(b) Any person who violates any other provision of sections 2 to 10, inclusive, of this act shall be fined not more than one thousand dollars for the first offense and, for each subsequent offense, shall be fined not more than one thousand dollars and imprisoned not less than thirty days, but not more than one year.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2010*	36a-671(a)
Sec. 2	*October 1, 2010*	New section
Sec. 3	*October 1, 2010*	New section
Sec. 4	*October 1, 2010*	New section
Sec. 5	*October 1, 2010*	New section
Sec. 6	*October 1, 2010*	New section
Sec. 7	*October 1, 2010*	New section
Sec. 8	*October 1, 2010*	New section
Sec. 9	*October 1, 2010*	New section
Sec. 10	*October 1, 2010*	New section
Sec. 11	*October 1, 2010*	New section

Statement of Legislative Commissioners:

In section 2(h) "(e)" was changed to "(f)" for the purpose of accuracy. In section 8(d), "as amended by this act" was deleted for consistency of internal references. In section 9 (f)(4), "subsection (f) of section 9 of this act" was changed to "this subsection" for accuracy. In section 10 (c), "this subsection" was changed to "subsection (b) of this section" for accuracy.

BA *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill modifies requirements for private debt settlement services and has no fiscal impact to the Department of Banking.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis
sHB 5409

AN ACT CONCERNING DEBT SETTLEMENT SERVICES.

SUMMARY:

This bill exempts, from the licensing requirements for debt negotiators established in PA 09-208, fee-based individuals or entities who negotiate only with unsecured creditors on behalf of a debtor. The bill instead creates separate licensing requirements for such individuals or entities who negotiate or attempt to negotiate unsecured consumer debt resulting in payment of less than the amount owed being accepted as full payment or full satisfaction of the debt. The bill defines such services as debt settlement, and defines debt settlement providers as those who offer or agree to provide debt settlement services to an individual for or with the expectation of valuable consideration.

The bill's requirements for debt settlement providers differ in various ways from existing requirements for debt negotiators, such as:

1. modifying the permissible form of fees that a debt settlement provider may charge a debtor and establishing maximum fees;

2. modifying enforcement, including providing specific penalties for violations, allowing the banking commissioner to adopt regulations to enforce certain provisions, and eliminating the commissioner's authority to order a reduction or repayment of fees;

3. modifying the application and licensing requirements, including grounds for license denial and exemptions from licensure;

4. establishing bank account and recordkeeping requirements for debt settlement licensees;

5. modifying the surety bond requirement for debt settlement providers, and allowing them to file a bond substitute or produce evidence of insurance in lieu of a surety bond;

6. modifying contract requirements, requiring specific disclosures, and eliminating the debtor's right to cancel a contract within three business days; and

7. prohibiting debt settlement providers from engaging in various activities.

EFFECTIVE DATE: October 1, 2010

DEBT SETTLEMENT SERVICES

§ 10 – Permissible Fees

The bill specifies the maximum fees that debt settlement providers may charge for debt settlement services. The allowable fees cannot exceed: (1) the lesser of $400 or 4% of the debt listed in the debt settlement services plan upon inception, for services including consultation, obtaining a credit report, and setting up the account; and (2) a $10 monthly service fee for each creditor remaining in the program when such a fee is assessed.

Providers can charge a flat fee based on the overall amount of the included debt or a fee based on a percentage of the amount saved by the debtor, but not both.

If the agreement provides for a flat fee, the total fees charged to an individual under the applicable banking statutes, including fees charged as provided by this bill, cannot exceed 17% of the debt principal included at the agreement's inception. A flat fee must be assessed in equal monthly payments over the course of at least half the length of the plan, as estimated at the plan's inception, unless the individual voluntarily accelerates the payments and at least half of the

outstanding debt covered by the agreement has been settled.

If the agreement provides for a fee based on a percentage of the amount the individual saves through the program, the fee cannot exceed 30% of the amount saved by the debtor, calculated at the time of settlement. Such fees are only billable as debts are settled. The total amount of fees charged to an individual under the applicable banking statutes, including fees based on a percentage of the amount saved by an individual, cannot exceed 20% of the principal amount of debt included in the agreement at its inception.

By contrast, the debt negotiation law instead authorizes the banking commissioner to establish a maximum fee schedule that a debt negotiator may charge for specific services. It prohibits a person offering debt negotiation services from receiving valuable consideration until the services are fully performed. A person offering debt negotiation services can receive reasonable periodic payments as services are rendered, provided such payments are clearly stated in the contract.

§§ 3, 6, 11 – Enforcement and Penalties; Regulations

With one exception, the bill gives the banking commissioner the same authority to suspend, revoke, or refuse to renew a debt settlement license, or take other enforcement actions pursuant to his general powers under the banking statutes, as applies to debt negotiators. Under the bill, one ground for such actions is a finding that the licensee or various individuals connected to the licensee materially failed to perform any obligations owed pursuant to an agreement with a debtor in Connecticut. By contrast, the debt negotiation law allows the commissioner to take such actions upon finding that any such individuals failed to perform any agreement with a debtor, without explicitly requiring that the failure be material or that the debtor be in Connecticut.

The bill provides that any person who engages in debt settlement services without a license will be fined up to $1,000 or imprisoned up

to one year, or both, for each violation. The bill provides that each day in which a person engages in debt settlement services without a license constitutes a separate violation.

The bill provides that a person who violates any other provision of the debt settlement services law is subject to a fine of up to $1,000 for a first offense. Each subsequent offense subjects a violator to a fine of up to $1,000 dollars and imprisonment for between thirty days and one year.

Unlike the bill, the debt negotiation law authorizes the banking commissioner, upon complaint, to review any fees or charges assessed by a person offering debt negotiation services and order a reduction of the fees or charges or a repayment of the amount that the commissioner deems excessive, taking into consideration the fees that other people performing similar debt negotiation services charge for such services and the benefit of the services to the consumer. The commissioner can do this under his general power to conduct investigations.

The bill allows the banking commissioner to adopt regulations to administer and enforce the bill's debt settlement services provisions related to applications, licensing, fees, and enforcement.

§ 2 –Application Requirements

Like the debt negotiation law, the bill requires any person seeking to engage in debt settlement services as a debt settlement provider in Connecticut to obtain a license. However, unlike the debt negotiation law, the bill does not specify what is required for the services to be considered to occur in this state.

Unlike the current law for debt negotiators, the bill does not require a person to obtain a separate license for each location where debt settlement will be conducted.

The bill modifies the requirements for license approval in the case of applicants that are corporations. The bill allows the banking

commissioner to issue a debt settlement license to a corporation if he finds (among other requirements) that the applicant and any officers, directors and owners have the financial responsibility, character, reputation, integrity and general fitness to warrant the belief that the business will be operated soundly and efficiently, in the public interest and consistent with the purposes of the bill. Current law allows the commissioner to issue a license if he makes such findings with regards to the applicant and any officers, directors, and principal employees (rather than owners).

The bill requires the commissioner to deny a debt settlement application if he finds that the applicant or, depending on the form of the business, the applicant's partner, member, officer, director, or owner has been convicted within the past 10 years of any felony or of a misdemeanor involving any aspect of the debt settlement business. By contrast, the debt negotiation law allows, but does not require, the commissioner to deny an application due to criminal convictions within the past 10 years.

Unlike the law for debt negotiators, the bill does not explicitly require a 10-year history of criminal convictions for the applicant's partners, members, officers, directors, and owners. However, the bill does require (as is required for debt negotiators) that the application contains sufficient information pertaining to such individuals' criminal history convictions over the prior 10 years as the commissioner deems necessary to determine whether to deny the application.

§ 2 – Licensing Fees and Renewal

The licensing fee for debt settlement providers is the same as for debt negotiators – $1,600. However, the debt negotiation law provides that if the license will expire in one year or less, the applicant only has to pay $800. The bill does not provide such a provision for debt settlement providers.

§ 4 – Licensing Requirements

The bill requires each debt settlement services license to state the

licensee's full name and business address. If a licensee does not have a physical location in this state, the licensee must maintain a registered agent in Connecticut and the agent's address must be stated on the license. Each license must be maintained at the address stated on the license and be available for public inspection. A debt settlement licensee may not use any name other than the one stated on its license.

The bill specifies that a debt settlement license may only be transferred in the case of the acquisition of the licensee by merger or otherwise, following an application prescribed by the commissioner. The debt negotiation law prohibits license transfer without exception.

The bill requires a licensee who ends its debt settlement services business in Connecticut for any reason to surrender its license to the commissioner, in person or by registered mail, within 15 days of ending such business.

§ 7 – Exemption from Licensing Requirement

In addition to those who are exempted by the debt negotiation law, the bill exempts the following from its requirements: (1) a title insurance or abstract company authorized to transact business in Connecticut or any other state, while doing an escrow business; and (2) a person acting pursuant to any Connecticut or federal law.

However, the bill does not exempt the following, who are exempt from the debt negotiation law: (1) any person licensed as a debt adjuster under the banking statutes, while performing debt adjuster services; and (2) any bona fide nonprofit organization organized under IRS Code § 501(c)(3) or any corresponding section.

The bill narrows the exemption for banks and other financial institutions. The bill exempts a bank or agent of any bank, fiduciary, or financing or lending institution authorized to transact business in Connecticut or any other state and that performs debt settlement services as an incidental part of its principal business. The debt negotiation law exempts any bank, out-of-state bank, Connecticut credit union, federal credit union, or out-of-state credit union,

provided subsidiaries of such institutions other than operating subsidiaries of federal banks and federally-chartered out-of-state banks are not exempt from licensure.

§ 5 – Bank Account and Recordkeeping

The bill requires each debt settlement services licensee who receives or holds consumer funds for payment to creditors to maintain a separate bank account for the benefit of debtors. Each such licensee must deposit into this account all payments received from debtors who are Connecticut residents.

The bill requires each licensee to keep and use in its business the books, accounts and records to enable the commissioner to determine whether the licensee is complying with the debt settlement services law, including any regulations adopted pursuant to such law. Licensees must preserve such books, accounts and records for at least seven years after making the final entry on any transaction recorded within the book, account or record.

These requirements do not apply to debt negotiators.

§ 8 – Surety Bond Requirement; Bond Substitutes and Insurance

The bill expands the types of assurances a licensee can provide to permit a bond substitute (an irrevocable letter of credit or other bond) or provide evidence of insurance as an alternative to filing a surety bond.

If an applicant files a surety bond, the bond must be in an amount determined by the banking commissioner of (1) up to $40,000 or (2) if the applicant receives or holds consumer funds for payment to creditors, the higher of $40,000 or double the highest total amount of payments received by the applicant from debtors in Connecticut in connection with the applicant's debt adjustment activity in any month during the preceding twelve-month period ending July 31st of each year. The bill requires a licensee, by September 1st of each year, to submit evidence to the commissioner that the bond complies with these requirements. The debt negotiation law requires the surety bond

to be in an aggregate amount of $40,000 for all licensed locations.

An irrevocable letter of credit or other government bonds or obligations in lieu of a surety bond must be in the same amount as required for a surety bond. An irrevocable letter of credit must be issued or confirmed by a bank approved by the commissioner and must be payable upon presentation of a certificate by the commissioner stating that the provider or its agent has not obtained a surety bond. The other permissible bonds or obligations include: (1) bonds or obligations issued or guaranteed by the United States, and (2) bonds or obligations of Connecticut or its political subdivisions. Such bonds or obligations must be deposited and maintained with a bank approved by the administrator to serve as a substitute for the surety bond requirement. The bill does not define administrator.

If the applicant produces evidence of insurance in lieu of a bond or bond substitute, the insurance must be for $250,000 and must:

1. insure against the risk of dishonesty, fraud, theft or other misconduct by the applicant, licensee, or the applicant or licensee's director, employee, or agent;

2. be issued by an insurance company authorized to do business in Connecticut that has at least an "A" rating by a nationally recognized rating organization;

3. have a minimum 10% deductible;

4. be payable to the applicant, to any individuals who have an agreement with the applicant, and to the state; and

5. not be subject to cancellation without the commissioner's approval or without a replacement policy that meets the requirements set forth above.

The bill applies various other surety bond provisions of the debt negotiation law to debt settlement licensees who file a bond substitute or produce evidence of insurance, as well as to those who file a surety

bond.

Current law allows a debtor to proceed on a surety bond against the principal or surety, or both, to recover damages if the debtor is damaged by (1) the licensee's failure to perform any written agreements or (2) conduct inconsistent with the debt negotiation law. The bill does not have a provision analogous to the latter provision.

§ 9 – Agreement; Required Disclosures

The bill requires a debt settlement provider to fully explain its services and disclose all fees and the fee schedule before providing debt settlement services in Connecticut. By contrast, debt negotiators must provide each debtor with a contract that include similar information plus the results to be achieved.

The bill requires debt settlement providers to prepare a financial analysis of a debtor before serving debtors in this state. The bill does not specify what the analysis requires. By contrast, each debt negotiation contract must contain (1) a statement certifying that the person offering debt negotiation services has reviewed the consumer's debt and (2) an individualized evaluation of the likelihood that the proposed debt negotiation services would reduce the consumer's debt or debt service or, if appropriate, prevent the consumer's home from being foreclosed.

Before a debtor agrees to work with a debt settlement provider on a debt settlement program, the provider must (1) inform the debtor of the provider's name and address; (2) give the debtor a copy of its financial analysis of the debtor, in a record identifying the provider and that the debtor may keep whether or not the debtor agrees to work with the provider on a debt settlement program; and (3) inform the debtor of the availability, at the debtor's option, to obtain assistance, in person or through a toll-free communication system, to discuss the provider's fee schedule and financial analysis.

An agreement between a debt settlement provider and a debtor must be in writing. Before a debtor enters into such an agreement, the

provider must also inform the debtor that:

1. debt settlement is not suitable for all debtors, and the debtor may ask the provider about other ways to deal with indebtedness;

2. participating in the program may lower the debtor's credit rating or credit score;

3. failure to pay debt may lead creditors to increase finance and other charges or to undertake collection activity, including litigation;

4. unless the debtor is insolvent, if a creditor settles for less than the full amount of the debt, the program may result in taxable income to the debtor, even though the debtor does not receive any money;

5. specific results cannot be predicted or guaranteed and the provider cannot force negotiations or settlements with creditors, but will advocate solely on the creditor's behalf;

6. the debtor must set aside money in a savings account according to the debt settlement provider's plan before the provider can negotiate settlements (the bill does not specifically require the debtor to do so);

7. the provider does not provide accounting, bankruptcy, or legal advice to the debtor unless professionally licensed to do so;

8. the provider is the debtor's advocate and is not paid by creditors, banks, or third-party collection agencies; and

9. the provider does not make monthly payments to the debtor's creditors.

In contrast to the bill, the debt negotiation law provides that each contract must allow the consumer to cancel or rescind it within three business days after the consumer signs the contract.

The debt negotiation law provides that any contract that does not comply with the above requirements and additional provisions relating to fees is voidable by the consumer. The bill does not contain such a provision.

§ 9 – Prohibited Activities

The bill prohibits a debt settlement provider from taking several actions. Providers may not:

1. settle an individual's debt for more than 50% of the amount owed a creditor unless the individual agrees to the settlement after the creditor has agreed;

2. act under a power of attorney authorizing the provider to settle a debt, unless the power of attorney expressly limits such authority to settle debts for not more than 50% of the amount of the debt owed a creditor;

3. exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

4. settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt unless, at the time of settlement, the creditor certifies or confirms to the individual that the payment is in full settlement of the debt or is part of a payment plan that is in full settlement;

5. represent that (a) the provider will furnish money to pay bills or prevent attachments; (b) payment of a certain amount will guarantee satisfaction of a certain amount of indebtedness; or (c) participation in a program will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction or loss of employment;

6. employ an unfair, unconscionable or deceptive act or practice, including the knowing omission of any material information;

7. advertise, distribute, broadcast, televise, or permit such displays

of the licensee's services, rates, or terms in any manner by which a false, misleading, or deceptive representation is made regarding the licensee's services or charges;

8. lend money or provide credit to the individual, other than through a separate affiliate holding an appropriate lending license, except as a deferral of a settlement fee at no additional expense to the individual;

9. purchase a debtor's obligation from a creditor;

10. operate as a collection agent and licensee with regard to the same debtor's account;

11. permit the debtor to sign a contract or agreement that is not fully and completely filled in;

12. obtain a mortgage or other security interest from any person in connection with the provider's services to the debtor;

13. provide the debtor less than the full benefit of a compromise of a debt that the provider arranges with creditors, except for fees charged for services as specified in the written agreement;

14. advise individuals to stop payment on any account that the provider is handling;

15. disclose the debtor's identity or identifying information or the identity of the debtor's creditors, except (a) as permitted by federal law; (b) to the commissioner upon proper demand; (c) to a creditor as necessary to secure the creditor's cooperation in the program; (d) as necessary to administer the program; or (e) as authorized by the debtor; or

16. falsely represent that the provider is a not-for-profit entity or not-for-profit credit counselor that will provide stand-alone credit counseling services.

The bill also prohibits debt settlement providers from initiating a

transfer from an individual's bank account with another person, if the provider does not receive and hold consumer funds for payment to creditors, unless the transfer is: (1) a return of money to the individual; (2) to pay a fee, provided the payment occurs before the agreement's termination and is properly authorized by the agreement and the debt settlement services law; (3) to pay a creditor to fund a negotiated settlement, provided the debtor has authorized both the transfer and settlement; or (4) to pay a creditor to fund a negotiated settlement authorized pursuant to the subsections of the bill allowing a provider to (a) settle a debt for more than 50% of the amount owed if the individual and creditor agree, or (b) act under a power of attorney expressly limiting the provider's authority to settle debts for not more than 50% of the amount owed a creditor.

COMMITTEE ACTION

Banks Committee

Joint Favorable
Yea 18 Nay 0 (03/16/2010)